

STATE OF VERMONT  
HUMAN SERVICES BOARD

In re ) Fair Hearing No. 10,024  
 )  
Appeal of )

# INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying her application for Medicaid. The issue is whether the petitioner is disabled within the meaning of the pertinent regulations.

## FINDINGS OF FACT

The petitioner is a sixty-four-year-old woman, who until March 1990, was working as a nurses aid in a convalescent home. Prior to that she had worked as a packer in a gift-wrapping factory and as floor manager in a department store. All her jobs required her to be on her feet and all entailed lifting of up to 50 pounds or more.

In March 1990, the petitioner was diagnosed as having extensive cervical cancer. From April to June she underwent surgery and both chemo-and radiation therapy. Fortunately, there has been no recurrence of the cancer. The treatment, however, has left her with chronic fatigue and bowel and urinary incontinence.

In a report dated October 23, 1990, the petitioner's treating physician indicated that she was totally unable to

perform any work activity (i.e., sitting, standing, walking, lifting, using her arms and legs, bending, etc.). In a brief narrative report, dated November 1, 1990, the same physician wrote:

[Petitioner] is a 63-year-old that presented with a large IIIB carcinoma of the cervix. She underwent chemo radiation therapy followed by intracavitary insertion. She completed her therapy in June of 1990. [Petitioner] still continues to complain of fatigue, intermittent diarrhea, and urinary incontinence. At the present time I do not feel she is a candidate to work since she is still suffering some sequelae of her extensive treatment.

With such a large and advanced carcinoma of the cervix her prognosis remains very guarded and this must be carefully watched for the possibility of recurrent. I do not believe that she has been able to work since at least March of 1990, and I am doubtful if she will ever be able to return to full employment.

Inasmuch as the above assessments are uncontroverted by any evidence (the rest of the medical record consists solely of the hospital and clinical reports and a telephone contact with a doctor who is no longer treating the petitioner), it is found that the petitioner is, and for the foreseeable future will be, unable to perform any substantial gainful activity.

ORDER

The Department's decision is reversed.

REASONS

Medicaid Manual Section M211.2 defines disability as follows:

Disability is the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, or combination of impairments, which can be expected to result in death or has lasted or can be expected to last for a continuous period of not fewer than twelve (12) months. To meet this definition, the applicant must have a severe impairment, which makes him/her unable to do his/her previous work or any other substantial gainful activity which exists in the national economy. To determine whether the client is able to do any other work, the client's residual functional capacity, age, education, and work experience is considered.

Uncontroverted medical evidence in this matter clearly establishes that the petitioner fully meets the above definition. The Department's decision is, therefore, reversed.

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